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JAN 3 1986

JOSEPH F. SPANIOL, JR.  
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No. 84-1560

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# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1985

THE PRESS-ENTERPRISE COMPANY, a California  
corporation,  
*Petitioner,*

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF RIVERSIDE,  
*Respondent.*

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On Writ of Certiorari to the California Supreme Court

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### SUPPLEMENTAL APPENDIX OF RESPONDENT

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PETITION FOR CERTIORARI  
FILED MARCH 29, 1985  
CERTIORARI GRANTED OCTOBER 15, 1985

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Bowne of Los Angeles, Inc., Law Printers (213) 742-6600.

## **Index to Supplemental Appendix**

	<u>Page</u>
Points and Authorities in Opposition to Motion Pursuant to Section 995 of the Penal Code . . . .	A-1
Reporter's Partial Transcript of Proceedings of January 21, 1983 . . . . .	A-32
Further Proceedings Re: 995 PC — Motion & Motion for Correction of Transcript — Date & Dept. of Hearing: 01-21-83 . . . . .	A-38
Reporter's Transcript of Proceedings of September 30, 1983 . . . . .	A-39
Reporter's Partial Transcript of Proceedings of October 5, 1983 . . . . .	A-48
Further Proceedings Re: Sealed Transcripts Date & Dept. of Hearing: 10-05-83 . . . . .	A-55
Further Proceedings Re: Sealed Transcripts Date & Dept. of Hearing: 10-14-83 . . . . .	A-56

**Points and Authorities in Opposition to  
Motion Pursuant to Section 995 of the Penal Code.  
IN THE SUPERIOR COURT OF THE**

**STATE OF CALIFORNIA**

**IN AND FOR THE  
COUNTY OF RIVERSIDE**

**NO. CR. 19889**

**(Hg. 1/21/83 8:30 D-14)**

**THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff,***

**v.**

**ROBERT RUBANE DIAZ,  
*Defendant(s).***

**Filed: January 18, 1983**

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**TESTIMONY OF DR. MICHAEL PEAT**

Dr. Peat testified that he is the Associate Director for the Center for Human Toxicology. He tested tissue samples from the twelve victims charged in the Information as well as tissue samples from Estel Jones. The test results supplied by Dr. Peat were set forth in People's Exhibit 41.

Exhibit "A" sets forth the various Lidocaine levels found in the corresponding organ tissue samples tested. The Lidocaine levels are depicted as micrograms per

gram in the organ tissue and micrograms per milliliter in the blood and vitreous humor fluid.

Exhibit "A" also sets forth the metabolite level detected in the samples tested. The first value is the actual Lidocaine level and the second value is the metabolite level. According to Dr. Peat the Lidocaine is metabolized in the liver. When the drug is injected into a patient it passes through the heart into the lung and then back into the heart. It is then distributed to all body organs. Specifically the drug is deposited in the liver, kidney, lung, brain, and heart. As Lidocaine is metabolized in the liver, the metabolite is then also distributed to the body organs.

Detection of metabolite in the body organs aided Dr. Peat in determining how soon before death the Lidocaine was administered. If the Lidocaine level far exceeded the metabolite level, it would indicate the dosage was given shortly before death. The longer Lidocaine circulates in the body one would expect the metabolite level to increase.

According to Dr. Peat a therapeutic dosage of Lidocaine would result in a blood level between two and six micrograms per milliliter. This would generally result from an infusion of less than 250 milligrams per hour.

Lidocaine is given in two fashions. First, it may be injected in a syringe or bolus form. This would be a singular injection from a prepackaged form of Lidocaine. The prepackaged syringe is available in 50 milligrams or 100 milligrams. Secondly, it may be given by intravenous infusion. Lidocaine would be mixed with another solution such as Dextrose and water (sugar water) and placed in an intravenous bottle and given as a drip or slow infusion

into a patient. The infusion rate would generally be one to four milligrams per minute.

Dr. Peat testified that an injection of 1000 milligrams of Lidocaine would be a lethal dosage. He would expect such a dosage to result in tissue concentrations of Lidocaine between 20 to 55 micrograms of Lidocaine per gram of tissue.

Toxic blood levels of Lidocaine would be between eight to ten micrograms per milliliter. Blood concentrations above 20 micrograms per milliliter would be fatal to a patient. Dr. Peat testified that the tissue samples tested on all 12 victims would be consistent with the lethal administration of Lidocaine in the range of more than 1000 milligrams of Lidocaine.

Based upon the low metabolites found in the tissue samples tested, Dr. Peat testified that in his opinion massive dosages of Lidocaine were given to the patients shortly before death. In most cases this would be several hours prior to death. In the case of Virginia Bayless, a massive dose was given within minutes of death. In the case of Clifford Swanson, Dr. Peat testified that a massive dose was given sometime after 5:45 a.m. on the morning of his death.

#### TESTIMONY OF DR. F. RENE MODGLIN

Dr. Modglin performed autopsies on all victims charged in the Information except for J. Clifford Swanson. With respect to that victim, Dr. McCammon actually performed the autopsy and Dr. Modglin physically examined the body after the autopsy. Dr. Modglin's conclusions regarding cause of death on the patients were based upon his observations and findings during the autopsy, on medical summaries prepared by Doctors Jutzy and Isaef



on the patients, and toxicology test results performed in large part by the Center for Human Toxicology. Dr. Modglin's laboratory performed blood testing on patient Bertha Boyce, Virginia Bayless and J. Clifford Swanson.

Dr. Modglin testified that in some cases death was caused directly from Lidocaine poisoning, in other cases Lidocaine contributed to the death of the patients in conjunction with other medical problems the patients were experiencing. In all cases Lidocaine shortened the life of the patients.

#### TESTIMONY OF DR. DALE M. ISAEFF

Dr. Isaefff testified that he is board certified in cardiology and internal medicine. Presently Dr. Isaefff is Director of the Coronary Care Unit at Loma Linda Medical Center.

Lidocaine is a very common drug used as an anti-arrhythmic medication. The drug suppresses and prevents rhythm disturbances arising from the ventricle (lower part) of the heart. The ventricular portion of the heart is the lower main pumping chambers. Lidocaine is a standard stock item in the Intensive Care Unit and is available on open shelves. Lidocaine comes in prepackaged syringes in amounts of 50 milligrams or 100 milligrams. Lidocaine is also available in a two gram (2000 milligram) vial which is especially designed for use in an I.V. bottle. The concentrated Lidocaine is mixed with a solution in the I.V. bottle and is slowly infused into a patient. In most instances the infusion rate is between one to four milligrams per minute.

Dr. Isaefff testified that an electrocardiogram (EKG) monitors the heartbeat and provides a written strip. The

strip contains a heartbeat cycle which is referred to as the QRS complex.

In cases where a patient is receiving too much Lidocaine the first symptoms of Lidocaine toxicity would be a change in behavior, nausea, dizziness, blurred vision, vomiting, and disorientation. These are mild toxic symptoms. Dr. Isaefff would expect, in most patients, mild symptoms to begin to occur in blood levels greater than five micrograms per milliliter. In such cases Lidocaine would be discontinued and the symptoms would clear rapidly. Lidocaine has a one to one and one-half hour half-life. This means that 50% of the Lidocaine would be dissipated in one half-life.

More severe symptoms would be respiratory depression, respiratory arrest, and subsequently followed by seizure activity. Dr. Isaefff would expect severe symptoms to manifest themselves in blood levels greater than ten micrograms per milliliter.

Lastly, in extremely high concentrations, a patient would show a marked widening or broadening of the QRS complex depicted on the EKG.

Massive dosages of Lidocaine interfere with the flow of the electricity from the top part of the heart to the bottom part of the heart. This of course causes a slowing down of the electrical conduction of the heart which results in the broadening or the widening of the heart cycle itself which is referred to as the QRS complex.

To cause the widening of the QRS complex from the massive administration of Lidocaine according to Dr. Isaefff, he would expect the dose of Lidocaine, if it is given in a singular amount, to be between 1000 to 2000 milligrams over a very short time period. If the patient is on a Lidocaine infusion maintaining a therapeutic blood level of

between two and six micrograms per milliliter, Dr. Isaefff would expect that a widening or broadening of the QRS complex would result from a singular injection of 1000 milligrams of Lidocaine on top of or in addition to the therapeutic infusion. He would expect Lidocaine in a massive dose to cause seizure activity in most cases. Seizures would commence within one to two minutes after injection.

The standing order or protocol at the Community Hospital of the Valleys at Perris called for the administration of a singular bolus of Lidocaine in the amount of 75 milligrams followed by a two milligram per minute infusion. According to Dr. Isaefff the standing orders were within acceptable therapeutic standards in the medical profession.

Dr. Isaefff reviewed the medical chart on victim Irene Graham. Graham was admitted to the Community Hospital of the Valleys on March 29, 1981 at 3:15 p.m. The patient died on March 30, 1981 at 6:15 a.m. According to the medical chart Lidocaine was administered to the patient within a therapeutic range. Prior to death the QRS complex was extremely broad. Seizure activity was noted. According to Dr. Isaefff the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of victim Bernard Kean. Kean was admitted to the Community Hospital of the Valleys on April 14, 1981 at 1:00 a.m. and expired at 5:07 a.m. on the same day. Seizure activity was noted prior to death with a wide QRS complex. Dr. Isaefff stated that the clinical picture of this client is consistent with the massive administration of Lidocaine within 1000 to 2000 milligrams. The medical chart reflects that Lidocaine was given to this patient within therapeutic dosages.

Dr. Isaefff reviewed the medical chart of victim Beatrice Cline. The patient was admitted to the Community Hospital of the Valleys on April 4, 1981 at 4:30 p.m. She expired on April 5, 1981 at 2:30 a.m. Prior to death seizure activity was noted with wide QRS complexes. The chart reflects Lidocaine was given in therapeutic dosages. According to Dr. Isaefff the clinical picture of the patient is consistent with the administration of a massive dose of Lidocaine within 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of victim John Rainwater. John Rainwater was admitted to the Community Hospital of the Valleys on April 9, 1981 at 10:00 p.m. The patient expired on April 11, 1981 at 4:45 a.m. The medical chart reflects wide, broad QRS complexes prior to death. The chart indicates that Lidocaine was given in a therapeutic amount. According to Dr. Isaefff the clinical picture of the patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of victim Marion Stewart. The patient was admitted to the Community Hospital of the Valleys on April 10, 1981 at 1:15 p.m. The patient expired on April 14, 1981 at 6:15 a.m. Prior to death broad, wide QRS complexes were noted. According to Dr. Isaefff the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of victim Kenneth Silvera. The patient was admitted to the Community Hospital of the Valleys on April 13, 1981 at 7:55 p.m. The patient expired on April 14, 1981 at 7:32 a.m. Prior to death wide, broad QRS complexes were noted. The medical chart reflects that Lidocaine was administered within therapeutic dosages. Accord to Dr. Isaefff the clinical



picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of victim Bertha Boyce. The patient was admitted to the Community Hospital of the Valleys on April 20, 1981 at 2:29 p.m. The patient expired on April 22, 1981 at 7:05 a.m. The medical chart reflects that the patient experienced seizure activity and wide, broad QRS complexes prior to death. The medical chart reflects that Lidocaine was administered in therapeutic dosages. According to Dr. Isaefff the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Isaefff reviewed the medical chart of Estel Jones. Patient Jones was admitted to the Chino Community Hospital on March 22, 1981 at 10:50 a.m. The patient expired on March 25, 1981 at 3:50 a.m. Prior to death the patient experienced seizure activity and wide, broad QRS complexes. According to Dr. Isaefff the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

#### TESTIMONY OF ROY JUTZY

Dr. Jutzy is the Chief of Cardiology at the Loma Linda Medical Center. Dr. Jutzy is board certified in cardiology and internal medicine. According to Dr. Jutzy in Lidocaine blood levels in excess of 20 micrograms per milliliter he would expect a widening of the QRS complex. According to Dr. Jutzy this would occur if a patient was administered a massive, lethal dose in the range of 1000 to 2000 milligrams given in a very short time period. Dr. Jutzy has not personally seen Lidocaine blood levels in patients to exceed 10 micrograms per milliliter, which

were very unusual cases. He further stated that occasionally they see levels ranging between 7 and 8 on patients who are receiving large, therapeutic amounts of Lidocaine. At Loma Linda Medical Center all patients who are receiving Lidocaine are given daily blood tests to determine Lidocaine levels. Dr. Isaefff's and Dr. Jutzy's opinions were based upon treating hundreds of patients at Loma Linda Medical Center and monitoring their blood levels. Dr. Jutzy has been utilizing Lidocaine as a medication to heart patients for well over the last 20 years.

Lidocaine is the most common drug used in an intensive care or cardiac care unit. Nurses are expected and taught in nursing school about Lidocaine administration and its effects.

Dr. Jutzy reviewed the medical chart on victim Minnie Dempsey. The patient was admitted to the Community Hospital of the Valleys on April 6, 1981 at 3:30 a.m. The patient expired on the same day at 7:20 a.m. Prior to death the patient experienced seizure activity and a wide, broad QRS complex. According to Dr. Jutzy the clinical picture of this patient would be consistent with the administration of a massive dose of Lidocaine in the range of 1000 to 2000 milligrams. Furthermore, Dr. Jutzy stated that the administration of the Lidocaine in his opinion was given at 4:39 a.m. to give the kind of clinical picture he subsequently saw. The amount of Lidocaine administered to the patient per the medical chart was within the acceptable therapeutic range.

Dr. Jutzy reviewed the medical chart of victim Gertrude Bryant. The patient was admitted to the Community Hospital of the Valleys on April 7, 1981 at 1:19 p.m. The patient expired on April 8, 1981 at 7:33 a.m. Prior to death the patient experienced seizure activity and a wide QRS complex. According to Dr. Jutzy the clinical picture

of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams. Furthermore, Dr. Jutzy stated that the massive dose of Lidocaine was given around 5:30 a.m.

Dr. Jutzy reviewed the medical chart on victim Henry Castro. The patient was admitted to the Community Hospital of the Valleys on April 17, 1981 at 6:00 p.m. The patient expired on April 20, 1981 at 4:58 a.m. Prior to death the patient experienced seizure activity and a wide, broad QRS complex. According to Dr. Jutzy the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams.

Dr. Jutzy reviewed the medical chart of victim Virginia Bayless. The patient was admitted to the Community Hospital of the Valleys on April 19, 1981 at approximately 10:00 p.m. The patient expired on April 20, 1981 at 1:38 a.m. Prior to death the patient experienced a wide QRS complex. According to Dr. Jutzy the clinical picture of this patient is consistent with the massive administration of Lidocaine in the range of 1000 to 2000 milligrams. A hypothetical question was posed to Dr. Jutzy, to wit, assuming that the blood level of Lidocaine on this patient was 130 microgram per milliliters, how much Lidocaine would have to be administered to this patient to achieve such a blood level? According to Dr. Jutzy, the patient would have to receive 2000 to 3000 milligrams of Lidocaine or more to achieve such a high blood level. The medical chart reflects that no Lidocaine was administered to this patient.

Dr. Jutzy reviewed the medical chart on victim J. Clifford Swanson. The patient was admitted to the San Gorgonio Pass Hospital on April 21, 1981 at 10:45 p.m. The patient expired on April 25, 1981 at 7:00 a.m. The

patient experienced seizure activity and a broad QRS complex. According to Dr. Jutzy the clinical picture is consistent with the administration of 1000 to 2000 milligrams of Lidocaine. The medical chart reflects that a therapeutic amount of Lidocaine was administered to this patient.

Victims Irene Graham, Bernard Kean, Beatrice Cline, Minnie Dempsey, Gertrude Bryant, John Rainwater, Kenneth Silvera, Marion Steward, Virginia Bayless, Henry Castro, and Bertha Boyce all died while patients in the Intensive Care Unit at the Community Hospital of the Valleys. J. Clifford Swanson was a patient in the Intensive Care Unit at the San Gorgonio Pass Hospital. Estel Jones was a patient in the Intensive Care Unit at Chino Community Hospital.

#### TESTIMONY OF DR. IRVING ROOT

Dr. Root testified that he performed an autopsy on Estel Jones on May 18, 1981. His opinion concerning cause of death was based upon his findings during the autopsy and toxicology test results received from the Center for Human Toxicology. Cause of death was the result of Lidocaine toxicity with a contributing cause being coronary arteriosclerosis with myocardial infarctions. According to Dr. Root, Lidocaine did shorten the life of Mr. Jones. Based upon Dr. Root's findings it is his estimate that patient Jones must have received a minimum of 2000 and probably closer to 3000 milligrams of Lidocaine prior to death. This amount of Lidocaine was administered within two hours of the patient's demise. Dr. Root stated that the level of Lidocaine found in the lung would be best representative of the blood level of Lidocaine.



The Lidocaine administered to patient Jones was by way of massive injection and not by way of a continuous intravenous infusion. If Lidocaine is being infused into the body, one would expect to find the ratio of the parent compound Lidocaine unchanged to the metabolite of Lidocaine in a ratio of approximately 3 to 1. In other words the Lidocaine detected in the tissues should be approximately three times as high as the metabolite. This would be expected in cases where the Lidocaine is administered by way of an intravenous infusion. In the case of Mr. Jones the ratio between the Lidocaine detected in the metabolite is approximately 100 to 1 in all organs tested.

The patient had been on a continuous intravenous infusion of Lidocaine up until approximately 17 hours prior to death. According to Dr. Root the patient would have cleared all of the Lidocaine infused into the body during that period of time and none would have been detectible at the time of death. Pursuant to the medical chart on the patient, within several hours of death on the 25th of March, he received only 200 milligrams of Lidocaine.

#### TESTIMONY OF DOROTHETTA ERNEST

Mrs. Ernest testified that she is a Registered Nurse and was employed through a nursing registry in 1981. On March 29, 1981, the witness was assigned to work at the Community Hospital of the Valleys in the Intensive Care Unit. Her shift began at 11:00 p.m. on March 29, 1981 and concluded at 7:00 a.m. on March 30, 1981. Registered Nurse Robert Diaz and Licensed Vocational Nurse Donna MacDonald worked with Mrs. Ernest on that shift in the Intensive Care Unit.

The witness described the Intensive Care Unit at the Community Hospital of the Valleys as a separate unit of

the hospital containing six beds. Entry into the Intensive Care Unit was by way of a double door which separated the unit from the rest of the hospital. People's Exhibit 53 was identified as the floor plan of the Intensive Care Unit.

Mrs. Ernest was assigned to patient Irene Graham. Mrs. Graham was one of the patients in the Intensive Care Unit on that particular shift. Mrs. Ernest first made a nursing assessment on patient Graham. This included a check of the patient's respirations and the patient's intravenous site. The witness did not recall anything out of the ordinary or unusual about the patient. The patient was on an intravenous infusion of D5W. D5W is essentially dextrose in water or sugar water.

The witness took a break at about 4:30 or 5:00 in the morning of the shift. At that time Mrs. Graham was sleeping soundly. The witness went to the break room which is right behind the nurses desk within the Intensive Care Unit. At that time Robert Diaz and Donna MacDonald were the only medical personnel in the Intensive Care Unit. While on her break, L.V.N. MacDonald came into the break room and told Ernest that she better come out now, that her patient is coding. Mrs. Ernest left the break room and as she approached the desk area of the Intensive Care Unit she observed Robert Diaz in her patient's room. He was injecting something into Mrs. Graham's I.V. line. Diaz told Mrs. Ernest that he was injecting a bolus of Lidocaine into the patient. Mr. Diaz stated that that was the second bolus he had given her. Mrs. Ernest then mixed a Lidocaine drip and it was hung at a rate of 2 milligrams per minute pursuant to the standard orders at the hospital for a Lidocaine drip. The witness administered no other Lidocaine to the patient.

After starting the Lidocaine infusion on the patient, she returned to the nursing desk to chart on the patient.

After approximately 15 minutes she heard the patient screaming out in the room. The patient then started having a seizure. When the patient began to scream and seizure she does not recall whether or not Robert Diaz was in the patient's room. A code was called on the patient and other medical personnel from the rest of the hospital responded. The patient expired at 6:15 a.m.

#### TESTIMONY OF DONNA MAC DONALD

The witness is a Licensed Vocational Nurse and in March of 1981 was working through a nursing registry. She was assigned to work the 11 to 7 shift on March 29 to March 30, 1981 at the Community Hospital of the Valleys. She worked in the Intensive Care Unit with nurse Robert Diaz and nurse Dorothea Ernest. Mrs. MacDonald stated that she did not administer any Lidocaine to patient Graham. Furthermore, the administration of Lidocaine is not within the licensing standards of a L.V.N. While Mrs. Ernest was on her break. Mr. Diaz informed Mrs. MacDonald that patient Graham was having problems. Mrs. MacDonald went to the break room to get Mrs. Ernest. Mrs. Ernest responded to her patient and for a period of time the patient settled down. After the patient stabilized Mrs. Ernest was working at the nursing desk doing paperwork. Patient Graham then began seizing and screaming. When this occurred she does not now recall where Mr. Diaz was physically situated within the unit.

Mrs. MacDonald worked the 11 to 7 shift at the Community Hospital of the Valleys beginning on April 4, 1981 and ending at 7 a.m. on April 5, 1981. She worked in the Intensive Care Unit on that shift with Robert Diaz and no other medical personnel. She recalls patient Beatrice Cline during the shift was brought in from the Emergency

Room at approximately 12:00 midnight. She was in the unit approximately an hour and became agitated and then appeared to start seizing. Before the patient began to seizure, Robert Diaz was in and out of the room. When the patient began to seizure, a code was called and other medical personnel from the rest of the hospital came into the unit to assist. Patient Cline expired at approximately 2:30 a.m. Mrs. MacDonald did not administer any Lidocaine to patient Cline. The seizure activity she observed in patient Graham and patient Cline was identical.

Mrs. MacDonald also worked the 11 to 7 shift at the Community Hospital of the Valleys commencing on April 19 and concluding at 7:00 a.m. on April 20, 1981. She was assigned to the Intensive Care Unit and worked that particular shift with Robert Diaz and L.V.N. Susie Stroman. She recalls that patient Henry Castro began to seizure towards the middle of the shift. Immediately before the seizure activity she cannot recall where Mr. Diaz was located within the unit. While Mr. Castro was seizing, Mrs. MacDonald and Ms. Stroman were in the room attempting cardiac pulmonary resuscitation. Mr. Diaz at that particular point in time was not in the room. Patient Virginia Bayless had a cardiac arrest in another room in the Intensive Care Unit. Two codes were simultaneously called. Ms. Stroman left Mr. Castro's room and Mr. Diaz came back in. Ms. Stroman went to attend patient Bayless. While in the room alone with Mr. Diaz, she was handed a syringe and was asked to administer it through the intravenous line. She was instructed to push or administer half of the syringe. She told Diaz that her license did not allow her to give intravenous injections. He told her to do it anyway. She placed her thumb on the end of the syringe and injected half of the medication into the bed linen and then placed the syringe on a shelf in the patient's room. This was room 20. After the codes were



called on the patients, additional medical personnel responded to assist. Mrs. Bayless expired at approximately 1:38 in the morning. Mr. Castro stabilized and subsequent to the first code was coded several times later. He seized on and off during the course of the evening until his expiration at approximately 4:58 a.m. Mr. Diaz was in and out of Mr. Castro's room up until the point in time that he expired. Mrs. MacDonald did not administer any Lidocaine to patient Castro or patient Bayless.

#### TESTIMONY OF SUSAN STROMAN

Ms. Stroman is a Licensed Vocational Nurse. She worked through a nursing registry and on April 19, 1981 was assigned to work the 11 to 7 shift at the Community Hospital of the Valleys. The shift began on April 19 at 11:00 p.m. and ended on the 20th of April at 7:00 a.m. She was initially assigned to work the medical/surgical floor. However, later on in the shift was reassigned to work in the Intensive Care Unit. She worked the shift in the Intensive Care Unit with Robert Diaz and Donna MacDonald. She recalled doing a nursing assessment on patient Bayless. After finishing the assessment with Mrs. Bayless, she walked out of the room and Mr. Diaz was coming out of Mr. Castro's room and said to her, "Come and look at this man. He looks strange." She went into Mr. Castro's room and he immediately went into a grand mal seizure. At this time Mrs. MacDonald was behind the nursing desk at the EKG monitor. Mr. Castro then went into respiratory failure and a code was called. While Mr. Diaz was in and out of Mr. Castro's room, patient Bayless developed cardiac arrest and a code was then called on her. When Mr. Castro seized the only medical personnel in the unit was Mr. Diaz, Mrs. MacDonald and Ms. Stroman. She testified she did not administer any Lido-

caine to Mr. Castro or Mrs. Bayless. Robert Diaz was the Supervising Registered Nurse in the Intensive Care Unit that night.

#### TESTIMONY OF LOIS CHEVILLE

Mrs. Cheville is a Registered Nurse and has been since 1945. The witness was a staff nurse assigned to the Intensive Care Unit at the Community Hospital of the Valleys. On April 3, 1981, the witness worked the 11 to 7 shift commencing at 11:00 p.m. on the 3rd and ending at 7:00 p.m. on the 4th of April 1981. She worked that shift alone in the unit with Robert Diaz. Bernard Kean was her patient.

She admitted him into the unit at approximately 1:00 a.m. in the morning and assessed his physical condition. The patient was receiving an intravenous flow of D5W. The patient began to seizure at approximately 2:10 a.m. and the seizure lasted approximately 30 seconds then followed by two more seizures. Up until this point in time no Lidocaine had been administered to Mr. Kean according to Mrs. Cheville. When the patient began to seizure Mrs. Cheville was behind a nursing desk doing some book work. Mr. Diaz and Mrs. Cheville were the only medical personnel in the unit. She cannot recall exactly where Mr. Diaz was inside the Intensive Care Unit immediately before the seizure activity. At approximately 2:30, a Lidocaine bolus was given followed by a Lidocaine drip. This was administered because of the ventricular tachycardia the patient was experiencing. The patient then stabilized and at 3:30 the patient was sleeping quietly with vital signs that were good. While Mrs. Cheville and Diaz were alone in the Intensive Care Unit, at approximately 4:00 a.m. the patient had another seizure lasting about a minute. During the period of time between 3:30 and 4:00



a.m., Mrs. Cheville does not have a recollection as to whether or not Mr. Diaz was in the room of patient Kean. Mrs. Cheville testified that the Lidocaine is kept in medical supply cabinets behind a nursing desk. The supply cabinets are unlocked and there is no sign-in sheet to be filled out when Lidocaine is taken. Lidocaine is kept in the cabinets in bolus and vial form. In bolus form it's stocked in 50 and 100 milligram syringes. In vial form it is stocked at the hospital in one and two gram vials. The vials are to be used for Lidocaine infusions or drips.

Mr. Diaz was dressed in a white uniform with white trousers, a white shirt and a white jacket with pockets. She observed Mr. Diaz to carry a bolus of Lidocaine in his shirt pocket each shift that she worked with him. When Mrs. Cheville worked with Mr. Diaz, she would observe him carry a bag into the Intensive Care Unit and leave it in the nurse's lounge.

Mrs. Cheville worked the 11 to 7 shift on April 7 and April 8, 1981. She worked with Robert Diaz in the Intensive Care Unit. She was assigned to patient Gertrude Bryant. She first assessed the physical condition of the patient and took vital signs. The patient was receiving Nipride by way of intravenous infusion to stabilize blood pressure. She appeared to be in a stable state. The patient began to seizure at approximately 5:15 a.m. At that point in time Mrs. Cheville had administered no Lidocaine to the patient. To her knowledge, no Lidocaine had been administered. She was behind the nursing desk doing book work when the patient seized. Mr. Diaz was behind the desk watching the monitor, however, she does not recall how long he was at that location prior to the seizure activity.

The patient was then given Valium and was oxygenated with an ambu bag. The patient was then intubated. Mr.

Diaz then administered a Lidocaine bolus and a Lidocaine infusion was started at two milligrams per minute. The terminal code was called at 7:26 a.m.

Mrs. Cheville was assigned to the Intensive Care Unit on April 10 and 11, 1981 and worked the 11 to 7 shift. She worked that shift in the Intensive Care Unit with Robert Diaz and Sarla Duller. John W. Rainwater was a patient in the unit on that shift. During the shift Mrs. Cheville recalls Mr. Rainwater seizing and a code was called and the patient expired. She did not administer any Lidocaine to the patient. At the time of the seizure activity, Mr. Diaz, Mrs. Duller, and Mrs. Cheville were the only nurses inside the unit. When the code was called other medical personnel from the hospital responded. Just prior to the seizure activity on Mr. Rainwater, Mr. Diaz was checking the patient.

Mrs. Cheville was assigned to the Intensive Care Unit on April 13 and 14, 1981 and worked the 11 to 7 shift. She worked that shift with Mr. Diaz and L.V.N. Carl Chetlan.

Mr. Chetlan was the attending nurse for patient Kenneth Silvera. She recalls Mr. Silvera seizing and two codes were called on him and he finally expired. She did not administer any Lidocaine to Mr. Silvera. Prior to the seizure activity on Mr. Silvera, Mr. Diaz had been in the room frequently helping Mr. Chetlan.

The only medication that Mrs. Cheville administered to patient Silvera was Lasix at approximately midnight. Mr. Silvera expired at approximately 7:32 a.m.

During the shift another patient by the name of Marion Steward was assigned to Mrs. Cheville. During the shift, Mrs. Cheville recalls that the patient started putting out a very large amount of urine which bothered her. She called Dr. Fandrich and the doctor responded to the hospi-

tal and ordered lab work done on the patient. Between 4:30 and 5:00 a.m. Mrs. Cheville administered 75 milligrams of Lidocaine to the patient. The patient was showing ventricular tachycardia and after the administration of the Lidocaine, the pattern went back to normal. At 5:55 a.m. the patient went into ventricular fibrillations. At that time Mr. Diaz, Mr. Chetlan, Mrs. Cheville and Dr. Fandrich were alone in the unit. Mrs. Cheville and Dr. Fandrich were behind a nursing desk at the time of the code. She does not recall where Mr. Diaz was located inside the Intensive Care Unit. The patient expired at 6:15 a.m.

#### TESTIMONY OF CARL CHETLAN

Mr. Chetlan is a Licensed Vocational Nurse and in April of 1981 was working through a nursing registry. He was assigned to work at the Community Hospital of the Valleys Intensive Care Unit on April 5 and 6, 1981. He worked the 11 to 7 shift. He worked that shift alone with Robert Diaz. Patient Minnie Dempsey was admitted into the Intensive Care Unit at approximately 3:00 a.m. on April 6, 1981. At that time Mr. Chetlan did a base line assessment of the patient. She was in the unit approximately one hour and developed seizure activity. At the time of the seizure activity Mr. Chetlan was alone in the unit with Mr. Diaz. Mr. Chetlan did not administer any Lidocaine to the patient. Furthermore, he has never administered Lidocaine to any patient. Mr. Chetlan does not recall physically where Mr. Diaz was situated inside the Intensive Care Unit immediately before the seizure activity. When the code was called on patient Dempsey other medical personnel responded from other parts of the hospital to assist. The patient expired at approximately 7:20 a.m.

Mr. Chetlan was assigned to work the 11 to 7 shift at the Community Hospital of the Valleys on April 7 through April 8, 1981. He worked that shift in the Intensive Care Unit with Robert Diaz, Lois Cheville and Nurse Wingo. He testified he did not administer any Lidocaine to patient Gertrude Bryant.

Mr. Chetlan was assigned to work at the Community Hospital of the Valleys' Intensive Care Unit on April 13 through April 14, 1981 on the 11 to 7 shift. He worked the shift with Robert Diaz and Lois Cheville, and he was assigned a patient by the name of Kenneth Silvera. Mr. Silvera was already in the unit when Mr. Chetlan arrived. He first did a base line assessment. Robert Diaz administered a 100 milligram bolus of Lidocaine at approximately 12:53 a.m. At 1:15 a.m. Mr. Diaz mixed a Lidocaine drip and started it at one milligram per minute. Mr. Diaz increased the Lidocaine infusion to two milligrams per minute at 1:53. At 2:02 a.m. the patient began to seizure and went into respiratory arrest and a code was called. The Lidocaine was turned off. When the patient began to seizure Mr. Chetlan, Lois Cheville and Mr. Diaz were the only medical personnel in the unit. According to Mr. Chetlan, he was behind a nursing desk at the time. He does not physically recall where Mr. Diaz was when the patient began to seizure.

The patient survived the first code and gradually started coming around. The patient started to seizure again and a second code was called at approximately 7:14 a.m. At the time of the second seizure nurse Joyce Darling was present in the Intensive Care Unit. She was the on-coming nurse to relieve the 11 to 7 shift. Her shift would technically start at 7:00 a.m. to 3:00 p.m. Mr. Chetlan testified that Joyce Darling went into Mr. Silvera's room and restarted the I.V. infusion of Lido-



caine that was initially mixed by Mr. Diaz and turned off by Mr. Chetlan at 2:02 a.m. Approximately two minutes after starting the Lidocaine infusion the patient began to seizure. The patient died at 7:32 a.m.

During the shift that Mr. Chetlan worked and attended patient Silvera, he recalls patient Marion Steward also being in the unit. Mr. Chetlan testified that he did not administer any Lidocaine to patient Steward.

#### TESTIMONY OF SANDRA WINGO

Mrs. Wingo testified that she is a Registered Nurse. In April of 1981, Mrs. Wingo was working through a nursing registry. She was assigned to the Community Hospital of the Valleys' Intensive Care Ward on the 11 to 7 shift on April 7 through April 8, 1981. She recalls working that shift with Robert Diaz, a male L.V.N. and a female R.N.

She recalls that the patient Gertrude Bryant being in the unit during that shift and testified that she did not administer any medication whatsoever to the patient.

Mrs. Wingo testified that she was assigned to the Intensive Care Unit at the Community Hospital of the Valleys on the 11 to 7 shift on April 21 through April 22, 1981. During that shift she worked alone with Robert Diaz. During the shift there were two patients in the six-bed Intensive Care Unit. She was assigned to patient Feitner and Robert Diaz was the attending nurse on patient Bertha Boyce. At the beginning of the shift Mr. Diaz told her that they should take their lunch break early because he felt the patients were going to go bad and he then asked her which one she thought would go first. Bertha Boyce was in Room 20. Later on in the shift patient Boyce arrested and seized and a code was called. At the time of the seizure, Mrs. Wingo was in the

unit with Robert Diaz and Dr. D. Mrs. Wingo did not administer any medication to Bertha Boyce. Mrs. Wingo's patient, Feitner, also seized during the shift and was coded. The patient however survived.

#### TESTIMONY OF PRAPHAVADEE DHARMAPANIJ

Dr. Dharmapanij testified that she is a licensed Medical Doctor and was associated with the Community Hospital of the Valleys. She was one of the treating doctors for a patient by the name of Bertha Boyce. In the early morning hours of April 22, 1981, she received a telephone call from Robert Diaz. She was at home and he was calling from the hospital in regards to patient Boyce. He wanted an order to give the patient Lidocaine. Dr. Dharmapanij ordered a 75 milligram bolus of Lidocaine. Diaz was told to call her back and report the patient's condition. Dr. Dharmapanij went back to sleep and woke up sometime later and realized that she had not been called back. She called the hospital and spoke with Robert Diaz concerning the condition of Bertha Boyce. After the conversation she went to the hospital and arrived at approximately 4:00 a.m. After arriving at the hospital she went into patient Boyce's room and examined the patient. She then went to the nursing desk and began reviewing the chart on the patient. After her review she went back into the room and found the patient not breathing. The patient then began to seizure. The patient went into cardiac arrest and a code was called. While she was reviewing the patient's chart at the nursing desk, Dr. Dharmapanij does not know whether Mr. Diaz went inside patient Boyce's room.

During the code on the patient, Dr. Dharmapanij ordered two 75 milligram boluses of Lidocaine. Dr. Dharmapanij is not aware of any other Lidocaine being



administered to the patient. Patient Boyce died at approximately 7:05 a.m. in Room 20.

### TESTIMONY OF LYNN RACE

Ms. Race testified that she is a Registered Nurse licensed in the State of California. In April of 1981, she worked through a nursing registry. On April 6, 1981, she was assigned to work the 7 to 3 shift at the Community Hospital of the Valleys. On that day she arrived several minutes before 7:00 a.m. When she arrived Robert Diaz and Carl Chetlan were present in the Intensive Care Unit. At that time she was told by Robert Diaz that Minnie Dempsey was bad and she was going to code. Within a few minutes the patient did in fact code. At the time of the terminal code Robert Diaz was already in the room. When Ms. Race entered the room the patient was having seizures. Ms. Race did not administer any Lidocaine to the patient.

Ms. Race testified that Mr. Diaz was wearing a nurse's uniform with white pants and a smock top. There were two pockets in the front. She saw syringes in the pockets and empty bottles of medicine.

On one occasion she remembered Robert Diaz pulling a vial of medication from his pocket and inserting a syringe and drawing out medication. She testified that the vial of medication was similar in size to People's Exhibit 50, which is a two gram or 2000 milligram vial of Lidocaine used for mixing I.V. infusions. Ms. Race stated that it is not normal procedure for nurses to carry around syringes or medications in their pockets.

Ms. Race worked the 7 to 3 shift on April 8, 1981 at the Community Hospital of the Valleys Intensive Care Unit. When she came on shift that morning Robert Diaz, Carl

Chetlan and Lois Cheville were present in the unit. At that time she had a conversation with Mr. Diaz concerning patient Gertrude Bryant. Diaz told her that she was in trouble and that she was going to code and was going to go. She characterized his demeanor as very excited and very hyper. He paced constantly back and forth from patient Gertrude Bryant's room to the nurses station and was looking at the monitor. Mr. Diaz was in the room just before the code was called. The patient began to seizure and a code was called.

Ms. Race worked the 7 to 3 shift on April 14, 1981 in the Intensive Care Unit at the Community Hospital of the Valleys. When she came on shift that day, Robert Diaz and Carl Chetlan were present from the night shift. Joyce Darling from the day shift was also present. Mr. Diaz appeared to be extremely excited and told Ms. Race that patient Kenneth Silvera was very bad and was going to code. When Robert Diaz made this statement he was standing in front of the patient's doorway in the room. Within a few minutes the patient seized, a code was called and the patient expired.

She testified that after a patient died in the Intensive Care Unit, the body would be removed and the bed remade for the receipt of another patient. This would normally be done by the nursing personnel within the unit.

### TESTIMONY OF ANTOINETTE MILLER

Ms. Miller is a Registered Nurse licensed in the State of California. In April of 1981, she was supervisor of the Intensive Coronary Care Unit at San Geronio Pass Hospital. In the early morning hours of April 25, 1981, she received a telephone call from the hospital. She responded to the hospital at that time to assist in patient

care in the Coronary Care Unit. She arrived at approximately 3:30 a.m. Present in the unit at that time was Dr. Azlam, Dave Neuman (a respiratory therapist), nurse Betty Bickmore, L.V.N. Toni Todero, and Robert Diaz. At that time they were trying to resuscitate a patient by the name of Patton. Mr. Patton expired and was pronounced dead at 3:37 a.m. There were two other patients in the unit at that time, J. Clifford Swanson and a patient by the name of Jones. After Mr. Patton expired, the medical personnel assigned to the unit consisted of Robert Diaz, Toni Todero, and Ms. Miller. At approximately 5:15 a.m. on the morning of April the 25th, Ms. Miller administered a 50 milligram bolus injection of Lidocaine to patient Swanson. The bolus was followed by a Lidocaine drip at two milligrams per minute at 5:20 a.m. At approximately 6:15 a.m. Robert Diaz informed Ms. Miller that he was giving the patient another 75 milligrams of Lidocaine. At approximately 6:30 Dorothy Morford arrived in the Coronary Care Unit. Mrs. Morford was assigned to work the 7 to 3 shift in the unit on April 25, 1981. After her arrival, she and Ms. Miller went into the staff lounge which is inside the Coronary Care Unit. They stayed in the lounge approximately 15 minutes and upon walking out of the lounge Ms. Miller observed Robert Diaz to be at Mr. Swanson's bedside next to the intravenous line. He then walked back to the nurses' desk and sat down. He was carrying a 3cc syringe in his hand. Mrs. Todero was behind the nursing station.

Within two or three minutes the patient Swanson began to seizure and a code was called. He then expired.

#### TESTIMONY OF TONI TODERO

Mrs. Todero testified that she is a Licensed Vocational Nurse. On April 24 and 25, 1981, she was assigned to

work the 11 to 7 shift at the San Geronio Pass Hospital. She testified that she worked that shift with Robert Diaz. She testified that she administered no Lidocaine to patient Swanson.

#### TESTIMONY OF SANIT BUMROONGCHART

The witness testified that he was a Medical Technologist employed at the San Geronio Pass Hospital in April of 1981. He took two blood tests from patient J. Clifford Swanson. One blood test was a 3:05 a.m. and the second test was conducted at 5:45 a.m. The blood drawn from the patient was placed in two vials and labeled as to time.

#### TESTIMONY OF NESSA ROSENBAUM

The witness testified that she was a lab technician employed at Bio Laboratories in April of 1981. She tested the blood samples drawn from J. Clifford Swanson labeled at 3:05 a.m. and at 5:45 a.m. She tested the blood for a quantitative analysis for the presence and level of Lidocaine. The blood sample drawn at 3:05 contained no Lidocaine. The blood sample drawn at 5:45 contained 1.2 micrograms per milliliter of Lidocaine.

#### TESTIMONY OF RITA DRIVER

Mrs. Driver testified that she is a Registered Nurse and in March of 1981 was employed through a nursing registry. She was assigned to the Chino Community Hospital to work the 11 to 7 shift on March 24 through March 25, 1981. On that shift she was scheduled to work in the Coronary Care Unit. She testified that she worked that shift in the unit alone with Robert Diaz.

She stated that during the shift there were three patients in the Coronary Care Unit at the hospital. Robert



Diaz was assigned to patient Estel Jones. At the beginning of the shift Mr. Diaz while looking at the monitors in the unit made the statement to Mrs. Driver that they were going to have trouble with Estel Jones. When that statement was made by Mr. Diaz, Mrs. Driver looked at the monitor and observed a sinus rhythm. A sinus rhythm is a regular rhythm. She saw nothing unusual with Mr. Jones medical condition.

Mrs. Driver was assigned to the two remaining patients in the Coronary Care Unit. Shortly before 3:00 a.m. on that shift, Mrs. Driver was at bedside with Mr. Diaz and patient Jones. Mrs. Driver had just mixed a Dopamine drip for the patient. Apparently the patient was having some problems with maintaining blood pressure. Mr. Diaz made the statement to her that the blood pressure was now okay and they weren't going to start the Dopamine drip. At that time Mrs. Driver left to check on the other two patients. She left Mr. Diaz at bedside with patient Jones. She was gone for approximately two to three minutes checking on her own patients. When she returned Mr. Diaz was still bedside with patient Jones. She started to take patient Jones' blood pressure but within a few seconds the patient started seizing. A code was called and additional medical personnel responded from other parts of the hospital. The patient expired at 3:50 a.m.

#### TESTIMONY OF ROBERTA DIXON

Mrs. Dixon is an Administrative Secretary at Golden Triangle Hospital in Perris. The hospital was formerly the Community Hospital of the Valleys. The Community Hospital of the Valleys was closed in May of 1981. The physical structure was purchased by Golden Triangle and the hospital was going through physical renovations. On November 24, 1981, the old Intensive Care Unit was being

renovated. The walls were being knocked out and new plumbing was being installed. She testified that on that day a Lidocaine syringe was found tucked under the bed sheets on the bed in Room 20.

After the hospital closed in May of 1981, the structure was secured and in essence remained untouched until renovations were commenced. The Intensive Care Unit remained undisturbed until November 24, 1981. This included the beds in the unit which had been made up for the receipt of patients.

#### TESTIMONY OF JEAN McCORMICK

Mrs. McCormick was the Hospital Administrator at the Community Hospital of the Valleys. She testified that Exhibit 69 was copies of the Coronary Care register for March and April of 1981. The document sets forth all patients admitted into the Intensive Care Unit along with the date and time. She testified that Exhibit 70 was a work sheet for the Intensive Care Unit setting forth in what rooms individual patients were assigned.

The last patient to be admitted to the Intensive Care Unit was on April 22, 1981. That patient transferred out on April 24, 1981. No further patients were admitted into the unit. The last patient to occupy Room 20 of the Intensive Care Unit was Bertha Boyce who expired on April 22, 1981 at 7:05 a.m.

#### TESTIMONY OF JOHN THOMAS ABERCROMBIE

Mr. Abercrombie testified that he is a Criminalist employed at the Department of Justice. Mr. Abercrombie was in receipt of the syringe found in Room 20 in the Intensive Care Unit at the Community Hospital of the Valleys. He described the syringe as a bolus of Lidocaine



labeled as a 100 milligram 2% dosage, manufactured by Abbott bearing a lot number of 11-614-DK. The bolus when full would contain approximately 5 milliliters of liquid. There was approximately one milliliter of liquid in the bolus upon receipt.

Mr. Abercrombie tested the liquid remaining in the bolus to determine the existence and amount of Lidocaine in the substance. He determined that the liquid actually contained a 23% solution of Lidocaine. When the bolus was full it would have contained approximately 1150 milligrams of Lidocaine.

#### TESTIMONY OF ANGELO RIENTI

Mr. Rienti testified that he was a fingerprint expert employed by the Department of Justice. He was supplied a latent fingerprint card from Donna MacDonald. Mr. Rienti examined the bolus of Lidocaine recovered from Room 20 in the Intensive Care Unit at the Community Hospital of the Valleys. He detected a latent print on the end of the bolus. He determined that print to be the right thumb print of Donna MacDonald.

#### TESTIMONY OF DAVID JACOBSEN

Mr. Jacobsen testified that he is a Laboratory Technician for Abbott Laboratories in North Chicago, Illinois. Mr. Jacobsen was requested to analyze a particular lot of Lidocaine, that lot being number 11-614-DK. He found the lot sample to contain 2% Lidocaine with a total dosage of approximately 97.6 milligrams in a vial labeled 100 milligrams. The relative standard deviation in the testing procedure is plus or minus 1% of the result. In this particular case the result was 97.6 plus or minus .97 as an error factor.

#### TESTIMONY OF DAVID WILLIAMSON

Mr. Williamson testified that he is the manager of Methods Development Services at Abbott Laboratories. He reviews all the manufacturing directions at Abbott with respect to drug development. His group developed the methodology for Lidocaine testing known as HPLC, High Pressure Liquid Chromatography. He generally oversees and approves manufacturing techniques for Lidocaine at Abbott. He testified that when Lidocaine is prepared it is made in lots or large batches of liquid. Each lot is one mixture or a homogeneous solution. From one particular lot numerous boluses of Lidocaine are bottled and distributed. Each bolus from a particular lot will be labeled with the lot number. Samples of the Lidocaine boluses are retained at Abbott for future testing. The boluses are selected at random from the lot.

Mr. Williamson testified that if the sample of Lidocaine retained by Abbott was consistent with the dosage labeled on the bolus, it would be representative of the entire drug the came from the particular lot.

#### TESTIMONY OF DIANE DONALIES

The defendant Robert Diaz in March of 1981 applied to work for the Staff Builders Health Care Nursing Registry in San Bernardino as a Registered Nurse. Mr. Diaz submitted an application with supporting certificates. The documents substantiate that Mr. Diaz is a Registered Nurse with special training in the field of coronary care and intensive care with an extensive employment history in hospitals.

**Reporter's Partial Transcript of Proceedings of  
January 21, 1983.**

**SUPERIOR COURT OF THE  
STATE OF CALIFORNIA,  
FOR THE COUNTY OF RIVERSIDE.**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff,*

VS.

ROBERT RUBANE DIAZ,  
*Defendant.*

No. CR-19889.

Before Hon. John H. Barnard, Judge, Dept. 14.

MR. MAGERS: And, additionally, Your Honor, I would like to be heard on an additional matter.

I filed my points and authorities, as I said, this Tuesday. And I requested that the matter be filed with this Court and the issue of disclosure be in essence litigated at this hearing.

I did not make public my points and authorities or statement of fact at that time because the People wanted to maintain the status quo at least until this hearing, to give counsel an opportunity to be heard on the matter of disclosing the preliminary hearing facts.

My statement of fact is about 40 pages in length, and it's basically a summary of the testimony at the preliminary hearing. And, as the Court well knows, the transcript was sealed by Judge Dabney pursuant to a defense request. And it is the defense's position at this point in time that a disclosure of the information would possibly prejudice Mr. Diaz' right to a fair trial.

However, at this point in time the People would request that the transcripts be made public as well as the points

and authorities that I filed that are not technically sealed by this Court at this point in time.

The reason being is we are dealing with a case that is now approximately a year and several months after Mr. Diaz' arrest, and this March will be two years after the date that the offenses were allegedly committed. Certainly a passage of time dulls the public's interest, and I think the public's interest in this case has been dulled in the sense that it has gotten and received very little news coverage for many, many, many months. And we arrived at the point in time where the public's right to know certainly must be considered by our office and by the Court. And obviously Mr. Diaz has a right to a fair trial. However, we have to balance competing interests. And at this particular point in time the People feel that a disclosure of the evidence, as evidenced by the preliminary hearing transcripts and my points and authorities, would not damage Mr. Diaz' rights to a fair trial.

This case is not going to be going to trial for a number of months from now. And the staleness and remoteness are weighed against the public's right to know. People feel that it's about time that the case is made public.

THE COURT: You're moving without notice now for an order to unseal the transcript of the preliminary hearing?

MR. MAGERS: That is correct. In addition to that, I would request that the points and authorities in opposition to Mr. Lee's motion be filed in the Court file and be subject to public perusal like any other document.

THE COURT: They are so filed. It just happens that during this week, when you gave them to me — I'm glad you brought them over to me. But they had a file stamp on them and came to me by you with the file.

It happens that I've been working on it every spare moment. I've been in a jury trial, as well. But you've had an exhaustive amount of material, and I was working on them in chambers ever since. But there's been no order sealing any document filed in this case.

MR. MAGERS: I appreciate that. However, I have had certainly requests for the documents, but I have not complied with those requests from other people simply because I wanted to maintain the status quo until this hearing. And I would —

THE COURT: All right. Mr. Lee, this may come as somewhat of a surprise to you.

MR. LEE: Well, Your Honor, the nature of Mr. Magers' motion is quite a change from the status quo. It would evoke quite a change from the status quo.

Preliminarily I would object to any change at this time, although Mr. Magers is correct that there has not been much media coverage or mention of the circumstances behind Mr. Diaz' case is correct.

The fact remains, as I'm sure the Court is aware, that the public interest can be very easily aroused. Witness the recent attempt to parole one of the convicted killers of Sharon Tate. When that matter came up, there was a great public outpouring of support for Miss Tate's family.

THE COURT: Mr. Lee, I'm going to do this. If you have opposition to it, the Court also is now in a matter of — this is a sudden change on the part of your opposition.

I think this matter should be regularly argued. Points and authorities and an opportunity for both sides to be heard, having had time for preparation for such a motion. I'm going to continue your motion, and we'll hear that on

the 7th at the same time. In the interim I want to maintain the status quo until the 7th. Absent some showing on the part of defense, I am probably going to grant your motion.

MR. MAGERS: With reference to my points and authorities, Your Honor, how would you wish me to proceed at this time? They have not been —

THE COURT: I have not made a gag order in this case.

MR. MAGERS: In other words, the points and authorities in this case would be deemed a public document at this time?

THE COURT: I'm afraid so.

MR. MAGERS: Very well.

THE COURT: Which probably will make the other one moot. But I know of no authority to seal some document that you're relying on in support of your position as to a legal motion.

MR. MAGERS: That's correct. And, of course, we are. That's —

THE COURT: That's different from just sealing a transcript of the preliminary hearing. But to go on and to seal documents filed in an ongoing case —

MR. LEE: Your Honor, with regard to Mr. Magers' comprehensive 39-, 40-page statement of the facts in his response to the defense 995 motion, I would request that the Court hold that from public inspection because, as Mr. Magers has already indicated, it is a very comprehensive review of the preliminary hearing transcript.

THE COURT: Well, what's my authority?



MR. LEE: Well, Your Honor, it would appear to me that if the Court were to rule in favor of the defense — and I'm not committing the defense to the position that we desire to have the transcript remain sealed at this time. It's something I would like to investigate with co-counsel and with my client, as well.

But to permit a public examination at this time of the points and authorities of the People would, in effect, grant the People's motion in advance of any hearing already or any opposition by the defense.

THE COURT: Well, I've read these points and authorities. As I've indicated, I've been working on them since they were given to me Tuesday. And, for the record, I have to agree with you and what Mr. Magers has already said, that his points and authorities are comprehensive analysis of the testimony given.

You are quite correct. His points and authorities are a detailed summary of all the evidence.

MR. LEE: And I might also add, Your Honor, that they are the characterization of the evidence by a proponent for one party.

I certainly think that we could, if we were to do the same thing, our statement might vary somewhat from that that has been presented by Mr. Magers.

MR. MAGERS: The fact remains, Your Honor, that is a public document. And certainly Mr. Lee had the opportunity to do a comprehensive review of the evidence in this case and submit his own points and authorities, which he failed to do. I took it upon myself to do it, and I worked very diligently for a period of about two and a half to three weeks, going through the transcript.

THE COURT: Oh, yes. And I don't think anybody is going to impute to you, sir, that you were trying to end around some order of the magistrate to seal the transcript. No, I don't think there's anything like that at all. You made those for this Court as a summary of weeks of testimony to assist the Court in the 995 motion. The Court should not indicate at all that anything is being imputed to you that you are trying to end around the magistrate's order sealing the transcript by now filing a public document.

Mr. Lee, I agree. If I don't in some fashion seal or preclude the public from getting to the District Attorney's document, file we're talking about, it will make the motion to unseal the transcript moot.

MR. LEE: Precisely, Your Honor.

THE COURT: And it will be the first time that the public has received any information with regard to the facts of this case, and they will be receiving it from an adversary's point of view, you adversary's point of view.

MR. LEE: Exactly.

I believe, Your Honor, the Court has the inherent —

THE COURT: I'm going to make this order, trying to retain the status quo. I'm going to order that the document filed by the District Attorney not be made public pending the motion on February 7. However, absent a very strong showing on the part of the defense in this matter, I will be unsealing the transcript and this document on that date.

Anything further?

MR. MAGERS: No, Your Honor.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

Criminal (1)

PEOPLE

VS.

ROBERT RUBANE DIAZ

Date & Dept. of Hearing: 01-21-83 14

NO. CR-19889

P. MAGERS, Deputy District Attorney  
*Counsel for Plaintiff*

J. LEE, Deputy Public Defender  
*for Defendant*

FURTHER PROCEEDINGS RE: 995 PC  
Motion & Motion for Correction of Transcript  
VIOLATION OF SECTION(S), (COUNTS &  
DEGREE)

187PC (Ct I thru XII)

Spec. Circum. 190.2(a) (3) PC

K. SMITH, Reporter

CUSTODY STATUS: Jail

People move to make Prelim. Transcripts + Points +  
Auth open to the public. Motion ordered con't to 2-7-83 at  
9 AM D/14.

Court orders documents not be made to the public  
pending further hearing.

Continued to 2-7-83 at 9:00 A.M. in Dept. 14 (3-5 days)  
BARNARD, Judge  
E. Jones, Clerk

Reporter's Transcript of Proceedings  
of September 30, 1983.

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA FOR THE COUNTY OF RIVERSIDE.

THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff,*

VS.

ROBERT RUBANE DIAZ,  
*Defendant.*

No. CR-19889.

Before Hon. John H. Barnard, Judge, Dept. 14.

THE COURT: In the matter of Robert Diaz.

MR. LEWIS: Yes, Your Honor, Michael Lewis, Pub-  
lic Defender, and John Lee, Public Defender, appearing  
with Mr. Diaz. We are ready to proceed on his matters if  
the Court wishes to take them at this time.

MR. MAGERS: Pat Magers appearing for the People.  
People are ready to proceed.

THE COURT: All right. We'll take the matter now.

MR. LEWIS: Yes, Your Honor. There are a number  
of matters that were called for motion this morning.  
However, there is another matter we wish to take up at  
this time which may affect the relevance of a number of  
those motions.

At this time Mr. Diaz wishes to advise the Court that he  
will waive his right to a trial by jury in this matter and  
wishes that this Court sit as the trier of fact in this case.  
It is our understanding the People will join in this  
motion. And I use the term "this Court" specifically,  
because Mr. Diaz wishes it to be understood that the  
waiver is made with the understanding that this Court  
and, more specifically, Your Honor, will be the judge who  
will sit during the trial.

MR. MAGERS: That's correct.

THE COURT: Is that correct?

THE DEFENDANT: Yes, I understand.

THE COURT: And you'll be giving up that right.

THE DEFENDANT: I'm giving it up.

THE COURT: And if you give up that right, then you will give up the right to this Court — I understand it is a waiver individually to this Court.

People — I believe this is appropriate, anyway, but do the People have any objection to that?

MR. MAGERS: No, Your Honor.

THE COURT: You're talking to your counsel. Anything that you want to say to me?

THE DEFENDANT: I think Mr. Lewis made it quite clear, the only way I am waiving, and I want to emphasize it, that the case would be tried before this Court and before Judge Barnard.

THE COURT: I understand it's a waiver of jury trial before this Court.

You also are giving up one other factor. It is the duty of a trial judge, even with a jury, a duty he cannot abandon, to independently evaluate the findings of the jury. First of all, if the trial judge has reasonable doubt, he would have to set aside the jury verdict. Do you understand that? You'll be giving up that right, because there won't be a jury. You understand that? And in the question of sentencing, if the jury in the sentence portion of the special circumstances proceedings were to return a decision, a verdict, that the punishment, you would be subject to the death sentence, a trial judge has the absolute duty

to independently evaluate that, and if he disagrees, to set that aside and impose life without possibility of parole.

In the sense that you will not be having a jury, you'll be giving up that right. You understand that?

THE DEFENDANT: Yes, I do.

THE COURT: The case will be tried before a judge. Anything about this that I've said that you didn't understand that has not been talked over before with your attorney?

THE DEFENDANT: No, we discussed it quite thoroughly. I understand all of it.

THE COURT: And do you have any questions at this time?

THE DEFENDANT: Not at this time.

THE COURT: Do you want some time to talk to your attorneys about it?

THE DEFENDANT: No.

THE COURT: Are you prepared, then, for me to ask you if you personally waive trial by jury?

THE DEFENDANT: Yes.

THE COURT: On both phases that I've been talking about of the special circumstances case?

THE DEFENDANT: Yes.

THE COURT: All right. Defense counsel has already personally waived. That's correct. I believe the Court is straight. The defendant has made the motion. People have joined in the motion, and the defendant has personally waived trial by jury. Find the waivers good. Order that they be entered.



Next matter?

MR. LEE: Yes, Your Honor. As the Court is aware, we had previously filed for this date I believe a total of five motions. One is a motion pursuant to Witherspoon and Hovey, and then also a challenge of the venire panel, panel selection. Those two motions, insofar as they relate directly to the jury, are now moot with the Court's acceptance of the waiver. We would request the Court to permit counsel to withdraw those motions.

There remain three other motions. One is a discovery motion. Following its filing with the Court, Mr. Magers and I have been in discussions, and I believe we resolved all matters pertaining to this particular motion, so the Court need not take up that matter, either.

That leaves the motion in limine with regard to certain evidence we anticipate may be introduced pursuant to, may be introduced at trial, and also a motion in the alternative, somewhat related to the same, pursuant to Penal Code Section 954, to-wit, a severance of counts, particularly Count III from the remaining, from the other 11 counts alleged.

Mr. Magers has advised me that he desires more time to respond to those particular motions. With the Court's permission we would request a new date to be set for those motions of the 14th. I anticipate before that time Mr. Magers will provide both defense counsel and the Court with his responding authorities.

THE COURT: All right. Those motions will be continued to October 14 at 8:30. Trial date will remain as previously set. The motions pertaining to jury are withdrawn. Discovery is still pending, but it probably will be resolved, is that correct?

MR. LEE: I anticipate in all probability it will be resolved, Your Honor.

One more item. The Court has us set on October 5, I believe, for a T. We are due to appear before the District Court of Appeals in San Bernardino that same day. We would request that the TRC also be continued over to the same date of the 14th.

MR. MAGERS: That's fine, Your Honor.

THE COURT: So ordered.

MR. LEE: Thank you, Your Honor.

THE COURT: Now, in regard to particularly orders that this Court has made up to this point sealing certain portions of proceedings in this matter, those motions, those orders were made solely upon the premise of a jury trial. It seems that those orders should be vacated.

MR. LEE: Well, Your Honor, I would, I would beg to differ. My feeling is that with the actions that have been taken by the Press-Enterprise and by the People subsequent to the Court's ruling, the Court has, in effect, lost jurisdiction on that particular aspect of the case. That matter is presently before the DCA. There are, I'm sure, questions of mootness, but those are certain arguments that I plan to raise before the DCA on Wednesday. And I would request the Court to —

THE COURT: I can't agree with you that an ongoing order of the control of my file in a pending case ever becomes moot until the case is closed.

MR. LEE: Well, perhaps I'm using the word mootness incorrectly, Your Honor. My feeling is that the last order of the DCA was to require respondent or real party in interest to show good cause why your order of February 10th should not be vacated.

THE COURT: I'm familiar enough with appellate decisions to understand that even though sometimes something is moot, to say although the question is moot the question is of some importance, that we will go ahead and make the ruling. I'm sure that —

MR. LEE: My argument precisely, Your Honor.

THE COURT: I will give you until next Friday to give you time to show good cause to show why not.

MR. LEE: Your Honor, could we have until the 14th?

THE COURT: I want to do it quickly.

MR. LEE: The reason that I am asking for the 14th is we have other arrangements pursuant to Mr. Diaz's defense that requires us to be out of town that day.

THE COURT: What day next week can you be here?

MR. LEWIS: It would not be a hearing before the hearing on the DCA. Your Honor, we will be gone on both Thursday and Friday, and the hearing is on Wednesday. So we prefer some day, preferably at least, well, Tuesday of the next week? Monday is a holiday. We'd request the 12th then at the earliest.

THE COURT: People?

Do you want to be heard?

MR. MAGERS: I'll submit it, Your Honor. Obviously the Court has the jurisdiction to reverse itself.

THE COURT: You can address yourself to the subject rather quickly. If you cannot, I'm going to vacate my order. I'll give you an opportunity to be heard, but I'm not going to let it sit around.

MR. LEE: May we have until the 12th then, Your Honor?

THE COURT: That's too long.

MR. LEE: May I confer a moment?

MR. LEWIS: Yes, Your Honor, could we have the afternoon of the 5th? The hearing is that morning in the DCA, and they may give —

THE COURT: All right. 1:30 on October 5, Department 14, to show cause why my previous order should not be vacated in regard to sealing transcripts.

MR. LEWIS: I'm sorry. The Court said October 14?

THE COURT: October 5, 1:30, in Department 14.

MR. LEWIS: Thank you.

**Reporter's Partial Transcript of Proceedings of  
October 5, 1983.**

**SUPERIOR COURT OF THE STATE OF  
CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

**THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff,***

**vs.**

**ROBERT RUBANE DIAZ,  
*Defendant.***

**NO. CR-19889.**

**Before Hon. John H. Barnard, Judge, Dept. 14.**

**THE COURT:** In the matter of Diaz.

**MR. LEE:** Your Honor, Mr. Diaz is present in court, represented by John Lee of the Public Defender's office and co-counsel Michael Lewis, the Public Defender for the County of Riverside.

The matter's before the Court once again to review the matter of whether or not the preliminary hearing transcript should now be made available to the public.

In the time since we last heard the matter I've been able to do a little bit of research. And I would — I feel that there's a Code of Civil Procedure Section 916 which is dispositive of this particular matter.

As the Court is aware, there is now and, as a matter of fact, we heard oral argument this morning before the Fourth District Court of Appeals regarding whether or not the preliminary hearing transcript should be made available. That matter has been submitted to the Court this morning. And there was some discussion during the morning's arguments as to what the Court could do today.

My feeling is that 916 is dispositive, that while the matter is still pending before the Court of Appeals, that

this Court should maintain the status quo, that is, keep the preliminary hearing transcript in its present state, that is, unavailable to the public, until such time as there is a definitive ruling.

There is also a certain problem as to whether or not the waiver of jury trial by Mr. Diaz renders the issue moot.

My understanding of the case law, particularly that as suggested in Kipnis. It's reported at 5 Cal. App. 3rd, 980. There the Court appears to say that the trial court has within its discretion, it may permit the withdrawal of a jury waiver.

Now, granted, the Court in this particular instance has accepted the jury waiver. But defense counsel foresees a possibility, certainly not a probability and certainly not something that we are actively looking for, but a situation whereby the jury waiver which we entered into might be, we may move to retract. I'm not saying that that is a certainty, but it is a contingency that I feel, as defense counsel, I should make Mr. Diaz aware of.

One of the situations that I could foresee is, again, legal necessity which would require a declaration of a mistrial, either your illness, Your Honor, or perhaps illness on the part of either defense counsel, which could necessitate declaration of a mistrial. Yet at this point in time I cannot foresee, you know, our respective health or the manner in which the case will actually be tried. But there is the possibility of a mistrial. And, should that be the case, I think that defense may want to reassess its position with regard to the jury waiver.

The Court will recall that last week the waiver, certainly my understanding of the waiver, was a conditional one to Your Honor hearing the case, sitting as the trier of fact.



If that condition should fail, then I feel the waiver would then be, we would be in the state that we were prior to last Friday, that is, a situation where we could reconsider whether or not we still wanted to have the waiver in effect.

So, based upon the possibility, admittedly a tenuous possibility but nonetheless the possibility of a mistrial requiring a review of trial strategy, and also Code of Civil Procedure 916, we feel that the Court should maintain the present status quo of the transcript.

MR. MAGERS: At this time, Your Honor, we are approximately three weeks from the trial date. These transcripts have been sealed since the commencement of the preliminary hearing in July of 1982. People certainly acknowledge the public's right of access to the information.

However, at this time the People would urge the Court to maintain the status quo pending the trial date of October 31st. That's our position.

THE COURT: Have you anything to say in regards to the Code of Civil Procedure section?

MR. MAGERS: No, Your Honor. Just that it is our position that we should maintain a position of status quo at this point in time, without releasing the transcript. Pending the trial in three weeks.

THE COURT: Then you are, in effect, joining with the defense counsel?

MR. MAGERS: I'm concurring with Mr. Lee.

THE COURT: Your concurrence is based simply on the fact that you just want to keep everything even?

MR. MAGERS: That's correct.

THE COURT: No possibility of some problem.

MR. MAGERS: That is correct. Because the People do anticipate some potential problems with the release of the transcripts, and in three weeks we could be faced with a jury trial situation. Certain things may develop which would necessitate possibly a jury waiver withdrawal. Death of Your Honor or a variety of other unforeseeable events. And I don't see why we just can't maintain the status quo right now. It's only three weeks away from our trial date. And when we start evidence on October the 31st, it will be a public trial, and I anticipate an opening statement on that date which, of course, will be an outline of the People's case.

THE COURT: Both attorneys' observations in regard to a possibility of something occurring that might at some point produce a change, is correct. We don't have to look through the whole list of horrors. There are many ways in which it happens that cases just don't proceed smoothly on the line outlined. So I'm not discounting that.

But I have a deep concern that at this point what you're talking about has to be balanced against the fact that there is a jury waiver and that there is no basis for my order other than the fact that it was a jury trial. I didn't make my order on the possibility. I made my order upon the facts that existed, that there was a jury trial.

Now, there isn't a jury trial. There may be one, but there isn't one now. And I am concerned that there's any jurisdiction, even any discretion left for me.

MR. LEE: Well, Your Honor, the case, the remedy should the Court today order the preliminary hearing transcript made available to the public would create a situation whereby the defense or, for that matter, if Mr.

Magers were to care to join, would create a situation whereby a writ of supersedeas may be petitioned for.

We are now, as Mr. Magers pointed out, three weeks away from court, from trial, actual presentation of the evidence. My feeling is that, given the fact that we will have a full-blown trial with fully prepared cross-examination and direct examination of the witnesses, that once the trial commences, it would probably serve the public's right to know, public's right of access more completely, to have that presentation, that availability, than the preliminary hearing transcript which, as the Court is aware, is basically the presentation of the minimal amount of evidence the prosecution feels is necessary to make the requisite showing.

The case law discussing writs of supersedeas generally states that the effecting of an appeal operates and deprives the trial courts of at least that aspect of the case which is being appealed. And my feeling is that the case law regarding writs of supersedeas, and also of 916, deprive this Court of jurisdiction of that particular matter.

Now, I can see where there may be a different construction based upon the orders that have been issued by the District Court of Appeals. But I feel that 916 nevertheless at this point in time is controlling.

THE COURT: Don't misjudge the nature of my previous comments. Thinking about this trial, thinking about the three parties, that is, prosecution, the defense, and the judge, I cannot but concur in both of your approaches, that the easiest thing to do is simply hold the status quo until opening statement and then, boy, oh, boy, there it goes. That's the easiest way.

I am not convinced that 916 deprives me of jurisdiction to do anything. On the contrary, I believe that the facts and the existence, the change of facts, have reduced my area of discretion.

Now, whether or not there is or is not open to the Court is discretionary, because it's statutory and it's addressed to discretion. I think both of you got through this morning arguing. But, in any event, I'm still approaching it on the fact that it's discretionary, and discretion is not, there is nothing left that I can see at this moment that is adequate for me to exercise my discretion to continue the sealing of these, absent, perhaps, that perhaps I do not have jurisdiction on that.

In that regard I will take the matter under submission. I want to research the cases on this. I am aware that we're talking — I would invite you, of course, to proceed by way of writ to review an order. Certainly I would not look askance if you do it. And that, in and of itself, will probably stay anything for the amount of time that's necessary before we go to trial. But, still, that's not what I'm looking at either. I'm looking at, do I have any discretion. Not balancing us, people in this courtroom, at this moment, but do I have the discretion of the other issues that are raised from sealing something from the public, that is the public's interest. The open court problem.

I'll take your matter under submission. What's your next appearance, counsel?

MR. LEE: We're before the Court on a couple of remaining pretrial motions on the 14th of October.

THE COURT: I know I'm selecting a jury. I would not be able to do any additional research today. The 14th?

MR. LEE: That's correct.

A-54

THE COURT: That's one week.

MR. LEE: That would be approximately ten days from today.

THE COURT: I'll issue my order on that date.

A-55

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

Criminal (1)

PEOPLE

VS.

ROBERT RUBANE DIAZ

Date & Dept. of Hearing: 10-05-83 14  
NO. CR-19889

P. MAGERS, Deputy District Attorney  
*Counsel for Plaintiff*

M. LEWIS & J. LEE, Deputy Public Defenders  
*for Defendant*

FURTHER PROCEEDINGS RE: Sealed Transcripts  
VIOLATION OF SECTION(S),  
(COUNTS & DEGREE)  
187PC (Ct I thru XII)  
Spec. Circum. 190.2(a) (3) PC

K. SMITH, Reporter

CUSTODY STATUS: Jail

Motion to keep preliminary hearing transcripts sealed  
is argued by counsel. Matter submitted

Ruling con't to 10-14-83 at 8:30 A.M. in Dept. 14.

BARNARD, Judge

E. JONES, Clerk



A-56

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

Criminal (1)

PEOPLE

VS.

ROBERT RUBANE DIAZ

Date & Dept. of Hearing: 10-14-83      14  
NO. CR-19889

P. MAGERS, Deputy District Attorney  
*Counsel for Plaintiff*

M. LEWIS & J. LEE, Deputy Public Defenders  
*for Defendant*

FURTHER PROCEEDINGS RE: Sealed Transcripts  
VIOLATION OF SECTION(S),  
(COUNTS & DEGREE)  
187PC (Ct I thru XII)  
Spec. Circum. 190.2(a)(3) PC

K. SMITH, Reporter

CUSTODY STATUS: Jail

All previous order Re sealing of Preliminary Transcripts and Deft's 995 P.C. Motion is ordered vacated.

BARNARD, Judge

E. JONES, Clerk